In the High Court of Punjab and Haryana at Chandigarh

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CWP No.7874 of 2006

Date of decision: 17.10. 2006

Amarjit Singh ..Petitioner

Versus

State of Haryana and others ..Respondents

Coram: Hon'ble Mr.Justice M.M.Kumar
Hon'ble Mr.Justice M.M.S.Bedi

Present: Mr.R.K.Malik,Advocate
for the petitioner.
Mr.Harish Rathee,Sr.DAG,Haryana
for the respondents.

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M.M.Kumar,J.(Oral

The prayer made by the petitioner in the instant petition filed under Article 226 of the Constitution of India is for quashing order dated 29.3.2006 (Annexure P-5) passed by the Director General of Police, Haryana,respondent No.2 declining his request for compassionate appointment on the ground that he had cross the upper age limit of 30 year. It is appropriate to mention that on 14.3.2005, the petitioner lost his father who was working on the post of Head Constable in the respondent-department. The petitioner filed an application for compassionate appointment, which was forwarded by the Superintendent of Police to the respondent No.2 and Director General of Police. It has been asserted by the petitioner that on the date of death of his father on 14.3.2005, he was less than 30 years of age as he was born on 20.12.1975, respondent -State had framed the rules known as Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules,2003 on 28.2.2003 (Annexure P-1). In these rules, the age prescribed initially was 25 years which was increased to 30 years on 17.12.2004. The aforementioned 2003 rules were repealed and new rules were notified on 18.11.2005(Annexure P-6). The case of the petitioner is that according to Rule 3(e) 'eligible family member' has been

defined to mean the unmarried son/ unmarried, divorced or widowed daughter, not above the age of 35 years; and according to Rule 3(g), the expression family has been defined to mean son, till he attains the age of 35 years. Therefore, it has been submitted that the petitioner was less then 30 years on the date of death of his father and he was less then 35 years on the date when the impugned order declining his request for compassionate appointment was passed on 29.3.2006.

In the written statement filed by the respondents, the only stand taken is that the petitioner had cross the age of 30 years on the date of passing impugned order on 29.3.2006 and therefore, the impugned order is not liable to be set aside. It has further been pointed out that the respondent-State has issued direction to the respondent No.3 Superintendent of Police to forward the case of his younger brother Kamaljeet Singh or send option for accepting 2.5 lacs as ex.gratia compensation.

After hearing learned counsel for the parties, we are of the considered view that the relevant date for the purposes of deciding the eligibility would be the date of death of the deceased-employee, which has resulted into financial insurgency to his family. It is well settled that in such like cases, rules prevalent on that date are required to be applied and the case of the petitioner should have been considered in the light of those rules. It is admitted position that under Section 3(e), the expression dependent was defined. The relevant rule was amended on 17.12.2004(Annexure P-4) and the age of 25 years provided in Rule 3(e) was raised to 30 years. After the amendment, Rule 3(e) would read as under:-

> "3(e) "dependent" means--
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> (i)spouse of the deceased Government employee or missing Government employee;
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> (ii) son(including adopted son)till he attains the age of 30 years subject to the proof of adoption as envisaged in the Hindu Adoption and Maintenance Act,1956.(78 of 1956)
>
> (iii) unmarried daughter(including adopted daughter) till

she attains the age of 30 years subject to the proof of adoptions as envisaged in the Hindu Adoption and Maintenance Act,1956 (78 of 1956);

iv) the person who was wholly dependent at the time of his/her death.

It is thus evident that the petitioner on the date of death of his father was less then 30 years and was eligible to be considered for appointment. The issue has come up for consideration in C.W.P.No.749 of 2005 decided on 5.7.2005 and the writ petition was allowed. Therefore, we find that the impugned order dated 29.3.2006(Annexure P-5) is liable to be quashed as the case of the petitioner could not have been rejected on the ground that he had crossed the age of 30 years.

In view of the above, this petition succeeds and the impugned order dated 29.3.2006 (Annexure P-5) is quashed. Accordingly, respondent are directed to consider the case of the petitioner for appointment on compassionate ground by treating him eligible for any such appointment. The needful shall be done within a period of two months. The petition stands allowed in the aforesaid terms.

(M.M.KUMAR)
JUDGE

October 17,2006
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(M.M.S.BEDI)
JUDGE